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**Testimony Before the Joint Committee on Finance, Revenue and Bonding  
of the Connecticut General Assembly  
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**In Opposition to the Digital Products Tax Included in the Raised Senate Bill 400**

Chairpersons Daily and Widlitz, and Members of the Joint Committee on Finance, Revenue and Bonding, thank you for the opportunity to provide testimony in opposition to the new tax on digital products included in the Raised Senate Bill 400 ("SB 400"). My name is Stephen Kranz; I am a Partner at the Sutherland Asbill & Brennan law firm in Washington, D.C., where I specialize in state and local tax. I appear before you today as an expert in the field of state taxation of digital products and services to express the technical and policy concerns that discourage adoption of such a tax.

SB 400, in relevant part, amends the state's definition of "sale" to include a completely new tax imposed on "digital products." "Digital products" is defined in the bill to include digital audio-visual works, digital audio work, and digital books. The bill is drafted broadly, however, by including the "a right or license to use, retain or make a copy" of a digital product. This language goes beyond a typical download tax and potentially extends to the "right to use" digital products provided through streaming music and video subscriptions. The lack of clarity about the extent of this legislation creates the kind of uncertainty that harms business investment in the state. Adoption of this new tax will adversely affect the Connecticut economy by discouraging high-tech companies from locating their operations in Connecticut, thus denying Connecticut residents the quality jobs they are so in need of. Simply put, imposing this digital products tax is bad for business in Connecticut.

**The Proposed Tax Discriminates Against Connecticut Companies**

The legislation would impose tax on digital products sold by Connecticut companies engaged in the digital economy. The tax increase would place companies located in Connecticut at a disadvantage by requiring that they collect tax on sales in the state while their out-of-state competitors enjoy a tax-free market. This discriminatory treatment exists as a result of the Commerce Clause of the U.S. Constitution, which prohibits states from requiring out-of-state businesses without physical presence in a state to collect tax. However, if SB 400 is enacted, in-state businesses will be required to collect tax when they sell to Connecticut consumers, while out-of-state businesses will be able to sell to Connecticut residents tax-free, thus providing the

out-of-state businesses with a clear price advantage. This "physical presence" requirement is particularly significant in its impact on the digital industry where consumers may purchase products from sellers anywhere in the world with a simple click of a mouse.

Connecticut is surrounded by states that do not tax digital products, including Massachusetts, Rhode Island, and New York. Indeed, just last year, the Rhode Island legislature rejected a similar tax proposal in an effort to protect this important segment of the state economy. Businesses can easily choose to locate in a neighboring state that does not tax sales of digital products. If this legislature enacts this new tax, it will send a clear message to the business community: we don't want your business or your jobs. Connecticut will undoubtedly experience a loss of current and potential jobs by enacting this legislation.

### **The Proposed Bill May Result in Double Taxation and Compliance Burdens**

The new tax on digital products in SB 400 lacks the kind of clear and logical sourcing provisions necessary to avoid double taxation on Connecticut consumers and compliance burdens on Connecticut businesses. Because neither federal guidance nor state guidance currently exists to appropriately source digital products sold in interstate commerce, SB 400 may lead to Connecticut customers being taxed twice for the same transaction. For instance, a Connecticut resident may purchase a digital movie through an account with a Connecticut address, but make that purchase while visiting family in New Jersey. As a result of potentially inconsistent sourcing rules, that Connecticut resident may face use tax obligations in both states. Competition for high-tech vendors among the states will hinge not only on whether the businesses are offered tax benefits for investing in the infrastructure and jobs necessary for those businesses to operate but on whether the states impose tax burdens on the customers of those companies.

### **Conclusion**

The digital economy is critical to the general economic health of Connecticut. But digital goods and services are particularly price-sensitive due to the ease with which a consumer can shop for better pricing and substitute a vendor that charges tax with a vendor that does not collect sales tax. Enacting the SB 400 tax imposition on digital products will drive that consumer behavior and ultimately push businesses to locate in other states. For these reasons, I respectfully request that the digital products tax be rejected. Thank you for considering these comments, and I look forward to additional discussions on this important issue.